SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
SEP 20 1963
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 35

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMERE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners

vs.

CITY OF TALLAHASSEE,

Respondent.

BRIEF OF RESPONDENT

ROY T. RHODES
P. O. Box 128
Tallahassee, Florida
EDWARD J. HILL
900 Midyette-Moor Bldg.
Tallahassee, Florida
RIVERS BUFORD, JR.
404 Midyette-Moor Bldg.
Tallahassee, Florida
Counsel for Respondent

September 20, 1963

INDE

Opinions Below .....

Question Presented .....

Florida Statutes and Ordinances In

Statement of the Case .....

Argument .....

Conclusion .....

K

Page

..... 2

..... 2

volved 2-5

..... 5-9

..... 10-21

..... 21

FLORIDA STATUTES AND ORDINANCES INVOLVED

	Page
Florida Statutes, 1961, §870.02	2, 11
Florida Statutes, 1961, §870.04	2, 3, 11
City of Tallahassee Code, 1957, §23-41	3, 4, 11, 13
City of Tallahassee Code, 1957, §23-38	4, 5

TABLE OF CASES CITED

	Page
Aaron v. City of Wausau, 74 N.W. 354	20
Beatty v. Gilbanks, 47 L.T. Rep. N.S. 194, 9 Q.B. 308	16
Boyce Motor Lines v. United States, 342 U.S. 337, 96 L.Ed. 367, 72 S.Ct. 329	17
Regina v. Neale, 9 Carrington and Payne 431	13
Regina v. Vincent, 9 Carrington and Payne 91	11
State v. Butterworth, 142 A. 57; 58 A.L.R. 744	12

IN THE

Supreme Court

of the

United States

OCTOBER TERM, 1963

No. 35

ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY,

Petitioners

vs.

CITY OF TALLAHASSEE,

Respondent.

BRIEF OF RESPONDENT

OPINIONS BELOW

1. While the opinion of the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, is not reported, a copy of the same is set forth in full as Appendix C of Respondent's Brief in Opposition to Petition for Writ of Certiorari, on file in this Court.

QUESTION PRESENTED

Where ten (10) persons, (be they Negro or white, clergymen or laymen) assemble together pursuant to a prearranged plan to "demonstrate" in protest against some real or fancied "discrimination" against them, and the "demonstration" is programmed so that it inspires well-grounded fear in persons of reasonable courage in the community to fear that there will be breaches of the peace and that fear and alarm would be excited, may not municipal officials, under provisions of law permitting them to order the dispersal of an unlawful assembly, order those assembled to disperse, and upon failure to disperse arrest them?

FLORIDA STATUTES AND ORDINANCES INVOLVED

870.02, Florida Statutes, 1961, provides as follows:

870.02 UNLAWFUL ASSEMBLIES.—"If three or more persons meet together to commit a breach of the peace, or to do any other unlawful act, each of them shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars."

870.04, Florida Statutes, 1961, provides as follows:

870.04 MAGISTRATE TO DISPERSE RIOTOUS ASSEMBLY.—"If any number of persons, whether armed or not, are *unlawfully*, *riotously* or *tumultuously* assembled in any county, city or municipality, the sheriff or his

deputies, or any constable or justice of the peace of the county, or the mayor, or any commissioner, councilman, alderman, or police officer of the said city or municipality, or any officer or member of the Florida highway patrol, shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the state command all the persons so assembled immediately and peaceably to disperse; and if such persons do not thereupon immediately and peaceably disperse, said officers shall command the assistance of all persons in seizing, arresting and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such rioter or persons so unlawfully assembled, or in suppressing such riot or unlawful assembly, refuses or neglects to obey such command, or, when required by such officers to depart from the place, refuses and neglects to do so, he shall be deemed one of the rioters or persons unlawfully assembled, and may be prosecuted and punished accordingly." (Emphasis supplied)

Sec. 23-4.1 of the 1957 City of Tallahassee Code, provides as follows:

Sec. 23-4.1. Assemblies—Unlawful, riotous, tumultuous; persons authorized to disperse or arrest summoning assistance.

(a) "If any person or persons, whether armed or not, are unlawfully, riotously or tumultuously assembled within the city, the mayor, any city commissioner or police officer or member of the police department of the city, whether such member be a regular or special police officer appointed for temporary service, *when in the opinion of* the said mayor, commissioner or police officer or member of the police department of the city, whether such member be a regular or special police officer appointed for temporary service, *the assembly of such persons shall tend to create a disturbance* or incite a riot or disorderly conduct within said city, the mayor, any city commissioner or any police officer or member of the police department of the

city, whether such member be a regular or special police officer appointed for temporary service, shall go among the persons so assembled, or as near to them as may be with safety, and shall in the name of the State of Florida and the City of Tallahassee command all the persons so assembled immediately and peaceably to disperse, and if such persons so commanded do not thereupon immediately and peaceably disperse, the city officers hereinabove named shall command the assistance of all persons in seizing, arresting, and securing such persons in custody; and if any person present being so commanded to aid and assist in seizing and securing such person or persons refusing to obey such command, or in suppressing a riot or unlawful assembly, refuses or neglects to obey such command, or when required by the officers authorized by this section to issue such command to depart from the place, refuses and neglects to do so, he shall be deemed one of the persons unlawfully assembled and shall be prosecuted and punished as hereinafter provided by this section.

(b) *Any person refusing to obey* the command to disperse as provided under the terms of this section *shall be deemed guilty of disorderly conduct* and shall be subject to the penalties of this section as hereinabove provided.

(c) Any person violating any of the provisions of this section shall upon conviction thereof be punished by a fine not exceeding five hundred dollars ($500.00) or imprisonment not exceeding sixty (60) days, or by both such fine and imprisonment. Each and every violation of any provisions of this section shall constitute a separate offense." (Emphasis supplied.)

Sec. 23-38 of the 1957 City of Tallahassee Code provides as follows:

Sec. 23-38. STATE MISDEMEANORS.

"It shall be unlawful for any person to commit, within the corporate limits of the city, any act which is or shall be

recognized by the laws of the State as a misdemeanor, and the commission of such acts is hereby forbidden.

Whosoever shall violate the provisions of this section, upon conviction thereof, shall be punished by the same penalty as is therefor provided by the laws of the state, but in no case shall such penalty exceed a fine of five hundred dollars, or an imprisonment for more than sixty days, or both such fine and imprisonment in the discretion of the municipal judge."

STATEMENT OF THE CASE

This is an appeal from a conviction of Petitioners for unlawful assembly. The Respondent charged that on June 16, 1961, the Petitioners unlawfully assembled in the Tallahassee Municipal Airport in that they "met together to commit a breach of the peace, acting together and concertedly to occupy and to continuously occupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group air-line reservations on the two (2) operating air-line schedules departing Tallahassee on the said date, and on June 15, 1961; in meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage, of riot, or other breaches of public peace", and that while so assembled a police officer went among them and commanded them to disperse, and they refused to obey. (R.11)

In order to explain to this Court the background circumstances that led these Petitioners into Tallahassee, it should be stated that they are part of a group of clergymen from Connecticut, New York, New Jersey and Massachusetts, and are representative of several races and religious denominations. They met at Washington, D. C., for the purpose of participating in what was then currently known as a "freedom ride", or at least the Petitioners were called "freedom riders". Their avowed objec-

tive was to "test" the segregation and/or integration aspects of facilities afforded them in the several cities that they passed through in their journey, one of which was Tallahassee, Florida.

Petitioners traveled by Greyhound Bus from a point of departure in Washington, D. C., to terminate in Tallahassee, Florida,

Petitioners, and other members of their party, arrived in Tallahassee about 11:30 A.M., June 15, 1961, pursuant to advance information and publicity. In anticipation of the circumstances herein calculated to excite alarm in this community, and the danger to the tranquility and peace of this neighborhood, sufficient protection was provided for Petitioners at all times in the form of city police, highway patrolmen, sheriff's officers, and sheriff's bureau representatives. A large crowd gathered shortly after the arrival of this traveling group and in the opinion of the City Attorney, there was the possibility of danger to the peace and tranquility of the neighborhood at that time. The outside crowd was ordered to disperse, and it did disperse. The Petitioners ate at the bus station restaurant and finished about 2:20 P.M., and they thereupon departed to the Municipal Airport to enplane according to their reservations at 3:25 P.M.

At this point, it seems appropriate to call to the attention of this Court, that the initial group of these so-called "freedom riders" was eighteen in number and that eight of them departed Tallahassee as pre-arranged. The airport restaurant, at this time, was closed for repairs. The Petitioners, construed that they had been denied entrance to the airport restaurant, elected to stay in the airport terminal waiting room and in the vicinity of this restaurant until it should reopen. They apparently thought that they had been denied food service and they then cancelled their existing air line reservations and remained to be served at a time when the restaurant would be open.

Repairs to the restaurant were not completed immediately,

in fact, were not completed for several days, during part of which time these Petitioners continued to remain in the adjacent airport waiting room, making and cancelling air line reservations on the following schedule:

(a) June 15, 1961, Thursday, Eastern Air Lines Flight #268 to leave Tallahassee 3:45 P.M. All eighteen (18) freedom riders ticketed and confirmed. Petitioners held tickets, but cancelled prior to departure.

(b) June 16, 1961, Friday, Eastern Air Lines Flight #954 to leave Tallahassee 8:38 A.M., this space requested the previous day after 3:45 P.M. Confirmed as to all appellants at 8:35 P.M. on the 15th. Petitioners would not surrender tickets for correct ticketing. They cancelled their reservations at 8:15 A.M., June 1, 1961, prior to departure of the flight at 8:38 A.M.

(c) June 16, 1961, Friday, National Air Lines Flight #362 to leave Tallahassee 1:49 P.M., confirmed as to all appellants at 8:20 A.M. Petitioners not ticketed and cancelled their reservations about 12:00 Noon.

Thus it can be seen that these Petitioners, during the dates of June 15 and 16, 1961, held cancelled tickets only, and in no sense of the word were they interstate passengers, for any contractual relationship with the air lines had ceased to exist. These Petitioners cancelled reservations on Eastern Air Lines Flight #268 on the 15th, just prior to departure, and cancelled reservations on Eastern Air Lines Flight #954, fifteen minutes prior to departure. Their tickets were automatically cancelled when their reservations were cancelled for a particular flight. Petitioners never held tickets on National Air Lines. The reservations were made in good faith; Petitioners held the reservations and checked in at normal flight time, cancelled these reservations some seven or eight minutes before departure, and there was available space for them. (R.54,56,57)

Petitioners continued to occupy the airport waiting room

facilities under the protection of the law enforcement agencies of the City, County and State. This protection was requested and given. At near midnight on the 15th of June, 1961, the airport was closed and the Petitioners were returned to Tallahassee under police protection which they had requested, to spend the night, returning to the airport early the next morning, ostensibly to board Eastern Air Lines Flight #954 departing at 8:38 A.M. The restaurant was still closed. Petitioners thereupon cancelled their reservations on Eastern Air Lines at this time, Friday morning, June 16, 1961, at 8:15 A.M. (R.78)

As the morning of June 16, 1961, progressed, it became very obvious to persons of long and comprehensive experience in the law enforcement field, that the continued activity of the Petitioners in the airport waiting room was tending to create the very clear and present danger of a riot. Consequently, and in accordance with the statutes and ordinances, Petitioners were informed that their disorderly assembly was creating a disturbance which would incite a riot, and they were commanded to immediately and peaceably disperse; they refused to obey the order, and were placed under arrest.

During the entire period Petitioners were in Tallahassee, they were adequately protected from any hostile acts by any person or persons. However, they arrived in this City with the avowed purpose to "test" imaginary or imagined discriminatory acts or practices, and they had a common intent to attain this purpose, whether the same was done lawfully or unlawfully. Respondent contends and urges that the same was done in such a manner as to cause sane, firm and courageous persons in this community to apprehend a breach of the peace.

The Petitioners were charged as follows:

"BEFORE ME, JOHN A. RUDD, Judge of the Municipal Court of the City of Tallahassee, Florida, personally ap-

peared JAMES MESSER, JR., and EDW. J. HILL, who being sworn, say that on, to-wit: the 16th day of June, 1961, upon property owned and operated by the City of Tallahassee, Florida, and located in Leon County, Florida, namely, the Tallahassee Municipal Airport, ISRAEL DRESNER, AUSTIN M. WARNER, ROBERT M. BROWN, PETTY D. McKINNEY, MARTIN FREEDMAN, ARTHUR L. HARDGE, ROBERT J. STONE, WAYNE C. HARTMIRE, J. W. COLLIER, JR., RALPH L. ROY, CHAS. A. HUNTER, JOHN W. POLAND, JR., and PRISCILLA G. STEPHENS: COUNT I, Did then and there unlawfully assemble in that they did and they being more than three (3) persons, meet together and concertedly to occupy and to continuously occupy certain chairs and seating facilities in the Tallahassee Municipal Airport, making and cancelling group air line reservations on the two (2) operating airline schedules departing Tallahassee on the said date, and on June 15, 1961, and meeting together in concert attendant with circumstances calculated to excite alarm, endanger the public peace and excite fear, and in such nature as to inspire well-grounded fear in persons of reasonable courage of riot, or other breaches of public peace, and while so unlawfully assembled a police officer of said City did go among these persons so assembled, and making himself known to them and each of them, did in the name of the State and City, command those so unlawfully assembled to immediately and peaceably disperse, and they and each of them did then and there refuse and/or neglect to obey such command when given, contrary to the laws and ordinances of said City in such cases made and provided, and against the peace and dignity of the said City of Tallahassee, Florida."

At the trial on the charges as set forth, the Municipal Court of the City of Tallahassee, Florida, found Petitioners guilty of unlawful assembly as charged. They, and each of them, were sentenced to pay a fine of $500.00 or in the alternative to serve sixty (60) days in the City Jail.

ARGUMENT

Respondent urges that the question of unlawful assembly is independent of race, creed, color, religion, clergy, profession, laity, interstate commerce, intrastate commerce, private ownership, governmental ownership, or any other factor than the danger to the tranquility and peace of a neighborhood or community, or to the body of persons who are called the public.

The record clearly reveals that the race of the Defendants, their religious denominations and educational backgrounds were more of a concern to Petitioners' Counsel during the trial than was the question of unlawful assembly and the exercise of lawful police power of Respondent, for as seen in the record:

"MR. SIMON: If your Honor please, may I *recall* Reverend Brown for just one question?

THE COURT: All right.

MR. SIMON: What is your color?

DEFENDANT BROWN: White." (R.222) (Emphasis supplied)

On redirect examination of the Witness Stone, one finds the zeal of Counsel to get the color of each defendant into the record so great that he directs his question to Defendant Warner in the courtroom while Defendant Stone is on redirect:

"Q. (By Simon) Reverend Stone, what is your color?

A. White.

MR. SIMON: Reverend Warner, what is your color?

DEFENDANT WARNER: White." (R.241)

Respondent urges that the question here presented be an-

swered affirmatively, and be stripped of all but the basic essential requirements of the law of unlawful assembly.

Since June of 1961, the practice of certain persons in this county has developed away from the so-called freedom rides, and has begun to manifest itself in what is now called "demonstrations". The newspapers, the radio, and the on-the-spot television cameras record for all to see the riotous, unlawful, disturbing conduct that is foisted on many communities in this country, both North and South, by persons seeking to enforce certain "rights" which are imagined to be theirs, in violation of the rights of other persons, in their property, in the conduct of their business, and in their right of peaceful worship. It would be useless to call to the attention of this Court, the activities of certain groups of persons in cities like Birmingham, Alabama, and other well-known cities in states like Maryland and South Carolina. Most recently demonstrations are taking place in New York State, Michigan and Illinois, all calculated to create a disturbance, incite to riot, and constitute conduct disorderly in every sense of the word. Respondent urges that its prompt activity, and its willingness to act, before such conduct on the part of these "demonstrators" reached the magnitude that it has now reached in many other cities of this country, is both laudable and commendable, and shows an exercise of constitutional duty to the protection of all persons.

These Petitioners are charged with unlawful assembly. Sections 870.02 and 870.04, Florida Statutes, 1961, and Section 23-4.1, City of Tallahassee Code, 1957, do not specify the specific elements of this offense. Consequently, we must resort to the cases to define this.

Regina v. *Vincent*, 9 Carrington and Payne (English) 91, defines unlawful assembly as any meeting assembled under such circumstances, according to the opinion of rational and firm men, *as are likely to produce danger to the tranquility and peace of the neighborhood.* (Emphasis supplied)

State v. *Butterworth*, 142A. 57; 58 A.L.R. 744, (N.J.,1928), the court stated, at page 59:

> "And it has been well laid down by a very learned judge that *any meeting assembled under such circumstances as, according to the opinion of rational and firm men are likely to produce danger* to the tranquility and peace of the neighborhood is an unlawful assembly and in viewing this question the jury should take into their consideration the way in which the meetings were held, the hour at which they met and the language used by the persons assembled, by those who addressed them and then consider where the firm and rational men, handling their families and property there would have reasonable ground to fear breach of the peace, as the alarm must not be merely such as would frighten any foolish or timid person, but must be such as would alarm persons of reasonable firmness and courage." (Russell, on Crimes and Misdemeanors, Edition of 1845, at page 272) (Emphasis supplied)

The Court emphasized in the above statement what it considered as essential ingredients, at common law, to constitute the indictable offense of unlawful assembly; significantly illustrating the futility of attempting for future guidance to adopt an inflexible definition of all circumstances and conditions which might arise in the course of human events. Each case largely and necessarily depends upon the object and character of the meeting, and whether or not the overt acts done by the participants therein, pursuant to a common understanding, are of such a nature as to inspire in persons of reasonable firmness and courage well-grounded fear of a riot, rout, affray or other breach of the public peace.

Respondent contends that the "object and character of the meeting" were sufficient in the minds of "persons of reasonable firmness and courage" to cause them to fear a breach of the peace.

Respondent argues that the meeting of these "freedom riders" in Tallahassee was attended with sufficient circumstances which were calculated and designed to excite alarm. Petitioners came to Tallahassee with an avowed purpose to demonstrate against the things that they did not like, and without orderly resort to the Courts for relief, and this type of "demonstration" and assembly is unlawful. *Regina* v. *Neale*, 9 Carrington and Payne 431 (English), says, at page 432:

> ".....the people of the town were most seriously alarmed."
>
> "That such an assembly was an unlawful assembly could not for a moment be doubted, because every assembly to the terror of her Majesty's subjects was an unlawful assembly, and though there be no breach of the peace, if the assembly is of such a nature as to cause alarm, *no one can tell where it will end, or what will be its consequences, and the law will not allow such an assembly*." (Emphasis supplied)

Quoting further from *Regina* v. *Neale*, Page 436,

> "But all of these cases [of assembly] admit of a variety of shades, because an assembly may be such that though, up to the time the magistrate goes to it, there may be no breach of the peace, yet it may be *so far verging towards a riot, that it may be the bounden duty of the magistrates to take immediate steps to disperse the assembly*." (Empnasis supplied)

Thus Respondent, in the exercise of its police powers, through its designated officers, acted promptly, and in the best interest of its citizens.

City of Tallahassee Code, 1957, Sec. 23-4.1, clearly adopts the common law element of opinion in anticipation of trouble likely

to cause disturbances. Petitioners would have an outbreak of trouble, before law enforcement steps in; then it is too late.

The common law and the City Ordinance of Tallahassee actually define the offense of unlawful assembly, the elements of which are:

(1) That persons are assembled,

(2) That in the opinion of the mayor or a police officer, such assembly shall tend to create a disturbance or incite a riot or disorderly conduct,

(3) That the mayor or a police officer command such persons to disperse,

(4) That those persons fail to disperse.

MR. JAMES MESSER, JR., City Attorney, and a special police officer, testified as follows:

Q. Mr. Messer, is it your opinion that there was a possibility of danger to the peace and tranquility of that neighborhood at that time?"

A. "There was." (R.29)

Mr. Messer had already testified that several uniformed officers, officers in plain clothes, a highway patrolman and the sheriff of Leon County accompanied by two deputies and representatives of the (Florida) Sheriff's Bureau (R.26) were on hand in grave anticipation of trouble, and this reflects interest and concern in the activity of these Petitioners by others than the City and County authorities, as the Governor of the State of Florida (R.42) had notified and employed the state patrol. The record also indicates some desire by the Attorney General of the United States to avoid the Tallahassee activity by these Petitioners. (R.43,44)

Respondent urges that this Court can take judicial notice of the fact that "demonstrations" and "protests" and "tests" of this kind are pregnant with danger to a community, and should be condemned; the fact that certain of our laws are too slow for the desires of Petitioners is no cause for such activity.

Petitioners have denied endangering the peace and tranquility of Tallahassee, but such denial is unfounded as their "march" here is likened unto the "march" on Washington, D. C. of August 28, 1963, where and when reasonable fear was inspired in anticipation of such demonstration.

The Associated Press, generally accepted as being capable of reporting the news, stated in its syndicated releases of August 28, 1963, that "Washington [was] jittery on the eve of civil rights march". That "The vanguard began arriving in an increasingly nervous Capital yesterday [August 27th] for today's big 'march for jobs and freedom' ". It was further said that "Authorities.....were taking extraordinary precautions. For example, the District of Columbia commissioners barred the sale of liquor in Washington during the day". Respondent contends that if such an assembly had not already caused firm and courageous men in Washington, D. C. to fear breaches of the peace, then the standards and prescriptions of the offense are elevated to acts of homicide, assault, malicious mischief and similar acts. Tallahassee found itself in a similar circumstance, although varying only in magnitude.

Frank Stoutamire, Tallahassee Chief of Police, and veteran law enforcement officer of 35 years in Florida, says of the incident:

> A. "It was generally talked around the terminal that there was possibly going to be some violence if the defendants [Petitioners here] continued to stay there (R.90)
>
> Q. "....did you have reason to believe that the contin-

ued presence of the defendants in the airport building would tend to incite a riot, cause a disturbance and disorderly conduct.

A. "I did.....

".....I didn't see that they [Petitioners] had anything at the airport to do unless it was for some unlawful purpose." (R.93,94)

Mr. William D. Hopkins, a veteran State Attorney of Florida of the Second Judicial Circuit, encompassing the counties of Leon, Jefferson, Wakulla, Franklin, and Gadsden, for 15 years, stated:

"....From talking to the people there and seeing the scene I knew that those people outside would have given trouble if the officers had not been present to take care of the situation." (R.151)

Petitioners will say to this, why not arrest "those people outside?" Respondent quotes from *Regina* v. *Vincent* (supra):

"You will consider how far these meetings partook of that character to cause alarm to the body of persons who are called the public, and whether firm and rational men having their families and property there would fear a breach of the peace....." (Page 109)

There is no authority for the arrest of "the public" when persons assemble in such manner as to cause alarm and the fear of an explosive situation.

Petitioners cite *Beatty* v. *Gilbanks*, 47 L.T. Rep. N.S. 194, 15 Cox C.C. 138, 9Q.B. 308(1882) as being on all fours. Respondent recognizes that this Salvation Army, the forerunner to the present Salvation Army in these United States, is primarily an organization to foster good will, relief and religious assistance, and did not go about the countryside "testing" griev-

ances. Respondent prefers to cite from *Beatty*, where it says, at page 47:

> "....for he who is in fear of such assaults must provide for his safety by demanding the surety of the peace against the persons by who he is threatened, *and not make use of such violent methods*, which cannot but be attended with the danger of raising tumults and disorder to the disturbance of the public peace. 15 Cox's Criminal Law Cases 147 (Eng. 1882)" (Emphasis supplied)

Petitioners have provisions for redress against unlawful practices and may not "demonstrate" and "test", as in the case at bar, to the point of danger and disorder. If Petitioners fear "assaults" (acts of discrimination as they allege here) they must demand "the surety of the peace" (due process of law) rather than the activity condemned here.

Petitioners argue here, no scintilla of evidence. Yet the testimony in the record is sufficient to sustain the opinion of witnesses such as Stoutamire (R.86-104) and Hopkins (R.148-151) that the community was in grave anticipation of breaches of the peace; Petitioners knew what they were doing and knew, or should have known, the consequences of their acts.

This Court has said, in *Boyce Motor Lines* v. *United States*, 342 U.S. 337, 96 L. ED. 367, 72S.Ct. 329:

> "....few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently no more than a reasonable degree of certainty can be demanded. Nor is it unfair to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line." (72 S.Ct.329, 330-331)

Part of this brief is written on August 28, 1963. As one of the writers was reading the morning papers, under a byline of a national news syndicate, the main headlines refer to the mass march of certain persons, predominately Negro, who are marching in groups of thousands of persons on Washington, D. C., the Capital of this country, in protest and to demonstrate. Certainly for no orderly purpose other than to show some type of brute or political strength. Respondent urges that such a demonstration and protest is an unlawful assembly, under any of the common law definitions of such offense, in that it does, in the opinion of rational and firm men, produce danger to the tranquility and peace of the community. It is likewise attended with circumstances calculated to excite alarm, as witnessed by the television pictures that show these mass marches, as attended by the grouping of masses of police and other governmental agency servants for the protection of the general population against the explosive character of such an unlawful assembly. Petitioners will answer this by saying that there was no intention on their part to excite alarm, no intention to assemble unlawfully, nor was there any unlawful purpose in their minds, nor were they intending to produce any danger to the peace of any neighborhood; however, Respondent likens this to a person walking through a powder house with a lighted faggot. Were such a powder house within the confines of this community, are we to allow some person to walk through the same with an open flame and then assert that he means no harm, that he intends no danger, that he will not allow a spark from his faggot to touch explosive material, nor is he likely to drop his flame in the excitement and push of such a venture? Respondent contends that the definitions of unlawful assembly as are given by the reported cases still obtain, and the manner of demonstration that is being acted by persons in this particular day and time does produce the essential elements of the offense. The mere assertion on the part of Petitioners that they intend no harm, is an invalid defense to an unlawful assembly. The magistrates, city officials and other officials charged with maintaining peace and tranquility are charged with the responsibility of anticipation,

and in the pursuit of their constitutional duty they are required to seek out those causes and elements that are likely to create such disturbance.

Generations ago this country suffered large losses by fire. At that time the main method of combating fire losses was to put out the fire after it got started. Now most advanced fire departments and agencies concentrate on fire prevention. Demonstrations such as the one in this instant case need prevention. Respondent urges that these Petitioners cannot come into a community, with an avowed purpose such as is stated in this record, and then with their hands open in supplication, say, "we mean no harm". It is the duty and responsibility of duly constituted officials to disperse assemblies as these, and not be afraid to act in the face of adverse public opinion from vocal minority groups.

Petitioners say (Brief 12) that "... even assuming that the judgments of the Municipal Court and the opinion of the Circuit Court established that under Florida law the offense of unlawful assembly was made out in the circumstances of this case, the convictions would necessarily be in violation of the rights of freedom of speech and assembly...." They say that they did not interfere with the normal business of the terminal building, or the air lines, or other passengers. This is not so. The whole climate of the area was charged with excitement; Petitioners congregated first here, then there. Conversing by phone with an assistant attorney general (of the United States) in Washington. Making and cancelling air line reservations according to the schedule herein. Certainly such activity by this group interfered with the normal business of the terminal, with the air lines and with other passengers. The testimony of Witness Canday (R. 53-79) is sufficient to show the ultimate confusion within this air line facility, by Petitioners.

Petitioners say their arrest was an undue burden on interstate commerce. Conversely, their *conduct* in the record is as undue

MICROCARD
TRADE MARK ®
22
PC 62
MATTHEW BENDER & COMPANY
MB
6-64
microcard

a burden on interstate commerce as can be imagined, if it can be that they were in interstate commerce, and is a breach of the peace. Other persons have the right to unfettered travel, and to be free of mass reservations and cancellations that disrupt the programming of the rights of other persons to have flight space.

Petitioners criticize Tallahassee for refusing to arrest others than them. The pointed answer to that is that all other persons obeyed the directives of the authorities, except Petitioners. They parrot "equal protection", "due process", "interstate commerce", yet point with pride that subsequent to their demonstrations a suit was brought which resulted in the injunction against racial segregation at the Tallahassee airport. *Brooks v. Tallahassee*, 202 F.Supp. 56 (N.D. Fla., 1961)

Respondent says that if Petitioners were to "ascertain" the facilities and to "test" them, their mission was accomplished at 3:45 P.M., Thursday, June 15, 1961. Thereafter the suit, subsequently brought, was "due process".

Brooks does not prove the legitimacy of the conduct of Petitioners, as stated in their brief (P. 20), rather it proves the orderly processes of procedure to determine, in a court of law, the differences about which they complain, and the illegitimacy of the mass demonstration, which has grown so as to endanger the peace and tranquility of our nation's Capital, and, yes, our country as a whole.

Aaron v. City of Wausau, 74 N.W. 354, at page 355, states: "A distinguished text writer, adopting the definition taken from the Draft Report of the English Commissioners of 1789, says:

"An unlawful assembly is an assembly of three or more persons, who, with intent to carry out any common purpose, assembled, in such a manner, or so conduct themselves

when assembled, as to cause persons in the neighborhood of such assembly to fear, on reasonable grounds, that the persons so assembled will disturb the peace tumultuously, or *will by such assembly* needlessly, and without any reasonable occasion, *provoke other persons to disturb the peace tumultuously*." 2 WHART CR. Law (10th Ed.) Sec. 1535. (Emphasis supplied)

CONCLUSION

Respondent concludes that every essential element of the offense of unlawful assembly has been proved, sufficient to uphold the trial court and the appellate court in this cause.

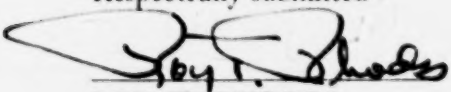
The trial court heard all witnesses, observed their candor, the manner in which they answered the questions propounded, saw the expressions on their faces and heard the inflections in their voices, and determined that a violation had been proven, pursuant to the applicable Florida statutes and the Tallahassee ordinances. The interjection of race, creed, and color of petitioners should have no bearing on the issues, though stressed by Counsel for petitioners.

The lawful exercise of a state's police power in the face of the eminent danger of a riot is not unconstitutional as being in violation of the "due process" clause or the right to the freedoms of speech and assembly.

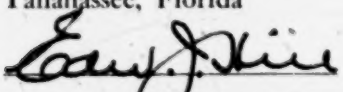
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief of Respondent has, pursuant to the Rules of the Supreme Court of the United States, been served by air mail upon ALFRED I. HOPKINS, 223 Southeast First Street, Miami, Florida, this 18th day of September, 1963.

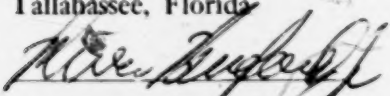
Respectfully submitted



ROY T. RHODES
P. O. Box 128
Tallahassee, Florida



EDWARD J. HILL
500 Midyette-Moor Bldg.
Tallahassee, Florida



RIVERS BUFORD, JR.
404 Midyette-Moor Bldg.
Tallahassee, Florida
Counsel for Respondent

ROY T. RHODES
P. O. Box 128
Tallahassee, Florida